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IN THE

Supreme Court of the United States

No. 1050

HOWELL VAN AUKEN, Administrator with Will Annexed of Estate of Lila Eddy Doebler, and DEAN LUCKING, Guardian Ad Litem of Richard Cleveland and Lila Eddy Cleveland, et al.,
Petitioners and Appellants below,
vs.
SECOND NATIONAL BANK AND TRUST COMPANY of Saginaw, Michigan, as Trustee, etc., C. K. EDDY AND SONS, a Corporation, and CHARLOTTE B. MORGAN,
Respondents and Appellees below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Respondents and Appellees below

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To: The Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your Petitioners respectfully show:

SUMMARY STATEMENT OF MATTERS INVOLVED

I. The complaint in this cause filed by Mrs. Doebler's Administrator—does not ask a rescission of the contract of March 11, 1920—but

(1) that Walter Eddy (her brother) be held a trustee as of his death in 1918 of Mrs. Doebler's 7812½ shares taken by him from her in 1908—and

(2) that Arthur Eddy's Estate, namely, his trustee, Second National Bank and Trust Company—and his legatee widow, Charlotte D. Morgan, be required to pay Mrs. Doebler's administrator the difference, as damages, between the true, fair value of her shares in C. K. Eddy and Sons in 1920—and the sum of $760,000 actually paid her under the agreement of March 11, 1920—Exhibit A. R. 33, under the authority of

Blakeslee v. Wallace, 45 Fed. (2) 347 (6 C. C. A.)

Bollstrom v. Power Car Company, 208 Mich. 15

The family holding corporation, C. K. Eddy and Sons, was owned in January, 1908, as follows:

(1) Walter S. Eddy ..... 9375 shares

(2) Lila Eddy Doebler ..... 7812½ shares

(3) Arthur D. Eddy ..... 7812½ shares

II. On January 30, 1908, Lila Eddy Doebler assigned her 7812½ shares to Walter S. Eddy by the agreement Exhibit 18, Record 159, in return for an annuity of $15,000 per year and $48,000 in cash.

III. On August 4, 1918—Walter S. Eddy died, intestate—leaving as his sole heirs at law (1) his sister, Mrs. Doebler, and (2) his brother, Arthur Eddy.

Walter Eddy died holding of record—as absolute owner thereof—his original 9375 shares and the 7812½ shares taken from Mrs. Doebler by Exhibit 18, in January, 1908.

IV. On March 11, 1920, the surviving brother, Arthur D. Eddy, bought all Mrs. Doebler's rights in C. K. Eddy and Sons and Walter Eddy's Estate—on the *positive representation* by Arthur Eddy (by the sworn appraisal and inventory filed in the Probate Court, by him, as administrator of Walter's Estate —See Exhibit A, R. 40, 43)—that all Mrs. Doebler then owned, and had to sell, as one of Walter Eddy's two heirs at law, was one-half of Walter's block of 9375 shares—valued at $150 a share.

In other words—the representation in 1919 to Mrs. Doebler was that all she owned in C. K. Eddy and Sons was (one-half of 9375) 4687½ shares, worth $150 a share—and that the corporation's net worth was only about $2,600,000 at Walter Eddy's death in 1918.

V. Petitioner and Appellant Administrator (for Mrs. Doebler—who died in 1938)—contends that

(1) Either Walter Eddy was, in equity, a trustee for Mrs. Doebler of her 7812½ shares in the years of 1908 to his death in 1918—and consequently upon his death—

Mrs. Doebler, in fact, owned 12,500 shares of C. K. Eddy and Sons (made up of her original 7812½ shares—and one-half of Walter's original 9375 shares)—or

(2) Walter Eddy owned absolutely at his death in August, 1918,—his original 9375 shares and

Mrs. Doebler's 7812½ shares—or a total of 17,187½ shares out of 25,000 shares—and consequently Mrs. Doebler—as his equal heir—owned one-half thereof, or 8593¾ shares.

VI. In 1919 and 1920, Arthur Eddy was President of C. K. Eddy and Sons of Saginaw, Michigan—and Administrator of his brother, Walter Eddy's Estate. He occupied a fiduciary relationship to his sister, Mrs. Doebler, an invalid, who then resided in Baltimore, Maryland.

VII. Although Arthur Eddy, in buying in March, 1920, his sister, Mrs. Doebler's rights in C. K. Eddy and Sons, positively stated and represented to her—by the Recitals in the contract of purchase of March 11, 1920—that

(a) C. K. Eddy and Sons was in 1918 only worth $2,600,000—yet

(b) On final hearing it was proved by Arthur Eddy's sworn tax protests filed with the Government that the Company was actually worth $4,411,000 in 1918, see Exhibit 112, R. 358, 456.

Even in the pleadings in this very case—the defendants—being the assigns and representatives of Arthur Eddy (who died in 1925) made a deliberate effort to *actively conceal* from Mrs. Doebler's Administrator the true value and worth of the family holding corporation, C. K. Eddy and Sons, in 1918, when Walter Eddy died.

Although it was discovered near the end of the final hearing in the District Court that C. K. Eddy and Sons was actually worth in 1918, the huge sum of $4,411,000 as sworn to by Arthur Eddy in tax

proceedings with the Government. See Exhibit 112, R. 358, 456—

yet in the answer of C. K. Eddy and Sons (R. 31) adopted by all the other defendants—it was positively stated—with no possible purpose other than to mislead Mrs. Doebler's administrator, Howell Van Auken,

that all that C. K. Eddy and Sons was worth at Walter Eddy's death in 1918 was $1,800,000. See paragraph (p) of answer—R. 31.

VIII. And in buying Mrs. Doebler's interests in her brother Walter Eddy's Estate in March, 1920, Arthur Eddy falsely misrepresented in his contract with her (Exhibit A, R. 33) that all the shares the deceased brother Walter Eddy owned in C. K. Eddy and Sons totalled 9375 shares and further falsely stated that Walter Eddy had transferred Mrs. Doebler's 7812½ shares (taken from her in 1908) to C. K. Eddy and Sons in 1914—whereas in fact, no such transfer or assignment of the 7812½ shares to the Company was ever made by Walter Eddy—prior to his sudden death in August, 1918, without a will.

IX. Thus by the contract of March 11, 1920, between brother and sister (Arthur Eddy and Mrs. Doebler), Mrs. Doebler was paid for—4687—shares (one-half of Walter Eddy's 9375 shares) in a Company represented by the brother, its president, to be worth only $2,600,000.

X. Upon the uncontradicted proofs before the District Court—Mrs. Doebler actually owned in March, 1920 —8593¾ shares (one-half of her brother, Walter

Eddy's, total of 17,187½ shares) in a family company, actually worth at least $4,411,000. See Exhibit 112, R. 358, 456.

XI. The Lower District Court waved these frauds aside by claiming that Mrs. Doebler must have known she was thus being defrauded.

See his Findings at pages 89 to 98 of the Record.

Neither the oral opinion nor the Findings and Conclusions of the District Judge were ever published in the Federal Reporter.

XII. The Honorable Circuit Court of Appeals for the Sixth Circuit—affirmed the Lower District Court's judgment—

practically without any opinion at all (117 F.[2] 938) merely saying:

> "We find in the record abundant substantial evidence to support the findings of fact of the District Court upon which judgment dismissing the counter-claims was based." (R. 503.)

XIII. Thus, no decision, discussion or opinion was ever given or written by either of the Lower Courts as to how Mrs. Doebler's 7812½ shares (taken from her in 1908 by her brother Walter Eddy) ever got into the C. K. Eddy and Sons Company—as so-called treasury stock.

For if they never were legally transferred out of Walter Eddy's name and Estate as petitioners and appellants claim—then Mrs. Doebler owned 8593¾ shares (instead of only 4687½ shares) and in a Holding Company worth $4,411,000 in 1918, when Walter Eddy died—instead of a Company worth

only $2,600,000—as represented to Mrs. Doebler by her brother, Arthur Eddy in the contract of March 11, 1920—Exhibit A. R. 33.

XIV. The sister's (Mrs. Doebler) original 7812½ shares were taken from her in January, 1908, by her older brother Walter Eddy (who died in August, 1918, intestate)

by the terms of the contract of January 30, 1908 —Exhibit 18, R. 159,

(a) For an annuity of $15,000 a year, and

(b) About $48,000 in cash.

The Record now shows without dispute that the family holding corporation and its subsidiary one-half interest in the co-partnership of Eddy and Glynn, actually made in net profits in the four preceding years of 1904, 1905, 1906 and 1907—the huge sum of $1,092,526.52, (R. 61 and 346)—

of which the sister's share (her 7812½ shares—31%) was $338,520.00.

These huge profits were not declared as dividends in those years—but were a part of the family holding corporation's assets of $4,411,000 in 1918—when the brother, Walter Eddy, died.

REASONS RELIED ON FOR ALLOWANCE OF WRIT

I. The decision of the Circuit Court of Appeals, by a short Per Curiam opinion (R. 502) merely adopted the Conclusions of the District Court—was erroneously made and without oral arguments or briefs in the District Court—and where the record showed conclusively that a *cestui que* trust (an invalid sister) had been defrauded out of at least $585,000 in 1920, by her older brother, Arthur Eddy, in a stock deal, by means of two conclusively proved misrepresentations, namely:

(a) That the invalid sister only owned 4687½ shares in the family holding Corporation—when in fact she actually owned at least 8593¾ shares, and

(b) That this family holding corporation was only worth in 1918—$2,600,000—when in fact it was actually worth $4,411,000—as sworn to afterwards by her brother Arthur Eddy in tax proceedings with the Government—See Exhibit 112, R. 358, 456.

NOTE: A full discussion of the District Court's Findings and Conclusions will be found in Appendix A to the Brief in support hereof.

II. The decision of the Circuit Court of Appeals—filed February 14, 1941—a mere ten days after the case was submitted on oral argument—although appellants had been granted ten days to file additional briefs—

was not a decision on the merits—consistent with the importance of this case and the heavy losses suffered by a *cestui que* trust—who is a ward of the Court—and always under its protection.

III. In neither opinion by either of the Lower Courts is there cited a single authority for their conclusions against appellants' manifest right of recovery.

IV. No decision was made by either of the Lower Courts determining whether the letter of February 5th, 1914 (Exhibit 17, R. 158) was an assignment of the sister's (Lila Eddy Doebler) 7812½ shares to the family Holding Company—or only an assignment of the income thereon—

and no issue on this most important question was raised by the pleadings.

V. The decision of the Circuit Court of Appeals holding that Walter Eddy had acquired his sister, Mrs. Doebler's, 7812½ shares in 1908 without fraud and upon an adequate and fair consideration was and is clearly erroneous.

VI. The decision of the Sixth Circuit Court of Appeals was erroneous in holding that the invalid sister's administrator had the burden of proof to show that her brother Walter Eddy had defrauded her in 1908 by taking from her, her 7812½ shares for an annuity of $15,000.00 and $48,000 cash—when

(a) Her shares had earned in net profits in the four years of 1904 to 1907, the sum of $338,520.00 and were worth reasonably

(b) upwards of $900,000,

when it is also considered that after Mrs. Doebler's older brother, Walter Eddy, had died suddenly in August, 1918, without a will—Mrs. Doebler wrote her brother, Arthur Eddy, on September 23, 1919, that:

"* * * I feel that it was never Walter's intention, and certainly not mine, to sell my stock outright for $15,000 a year, it having been Walter's intention to make such arrangement as would protect me and give me a substantial living which would be guaranteed by him. * * *" (R. 253, 254.)

And again, on December 15, 1919, the sister wrote her brother, Arthur Eddy, that:

"* * * The arrangement which originally made was in perfect good faith on his part and was done for my protection and yet the $15,000 annuity was merely a tentative arrangement by Walter. The figure of $15,000 did not represent the fair value of my interest in the company * * * Walter always said that at some time he would straighten out my affairs definitely so that I should receive the fair value of the stock in the company which I turned over to him at his request, and his untimely and sudden death prevented him from carrying out this promise or understanding. * * *" (R. 263, 264.)

Both of these letters were offered in evidence by defendants and appellees (R. 253, 263) and should conclusively place the full burden of proof upon them, as representatives and assigns of Walter Eddy, to fully justify Walter Eddy's taking of Mrs. Doebler, his sister's shares from her in January, 1908, for a consideration of annual interest of only about 2% of their fair worth—and nothing whatever for the principal of $900,000 of the fair value of her shares.

Wherefore, your petitioners pray that a Writ of Certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals, Sixth Circuit, commanding said Court to certify and send to this Court a full and com-

plete transcript of the record and of the proceedings of said Court had in the case numbered and entitled on its Docket,

No. 8336

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Appellants

vs.

SECOND NATIONAL BANK AND TRUST COMPANY of Saginaw, Michigan, as Trustee, etc. C. K. EDDY AND SONS, a Corporation, and CHARLOTTE D. MORGAN,

Appellees

to the end that this cause may be reviewed and determined by this Court as provided by the Statutes of the United States; and that the decree therein of said Circuit Court of Appeals be reversed by this Court and for such other and further relief as this Court may deem proper.

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